IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

AS.No. 431 of 2000()

OS.1025/1994 of I ADDL.SUB COURT,TRIVANDRUM

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APPELLANT/3RD DEFENDANT:

SECRETARY, THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY, JAYAMANSION, VAZHUTHACAUD, SASTHAMANGALAM P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.K.A.JALEEL, SC., TRIDA

RESPONDENTS/PLAINTIFFS 1, 3 TO 7 & DEFENDANTS 1 & 2:

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1. VIMALA RAVINDRAN, D/O.VELAYUDHAN, RESIDING AT ANITHAS, BEACH ROAD, KOLLAM.

2. RAJENDRAN @ RAJU R., PUTHUR, A.18, T.C.14/490, JAWAHAR NAGAR, THIRUVANANTHAPURAM.

3. MOHANLAL, RESIDING AT A.18, T.C.14/490, JAWAHAR NAGAR, THIRUVANANTHAPURAM.

4. SHEELA SADASIVAN, -DO- -DO-

5. JAWAHAR, -DO- -DO-

6. MEERA CHELLAPPAN, -DO- -DO-

7. THE DISTRICT COLLECTOR, COLLECTORATE, STATE OF KERALA, VANCHIYOOR, THIRUVANANTHAPURAM.

8. THE SPECIAL TAHSILDAR, ADDL. L.A. UNIT, CONVENT ROAD, VANCHIYOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.V.B.HARI NARAYANAN
SRI.P.GOPINATH
R1 BY ADV. SRI.SUBHASH CYRIAC
SRI.R.PANKAJAKSHAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.431 of 2000

Dated, this the 24th day of September, 2007

JUDGMENT

Third defendant in O.S.No.1025/1994 on the file of the First Additional Sub Court, Thiruvananthapuram is the appellant. Appeal is filed against a judgment and decree passed by the court below by which it had allowed the plaintiffs to recover an amount of Rs.44,952/- with interest from the appellant.

2. Short facts necessary for the disposal of the appeal are as follows: Plaintiffs were owners in possession and enjoyment of landed properties with buildings situated therein at Palayam, Thiruvananthapuram. That properties were acquired for a public purpose. In the property so acquired there were buildings occupied by tenants who were paying monthly rent to the plaintiffs. It was averred that the appellant took possession of the land on 13.5.1993. It was further averred that though an award was passed on 17.11.1992 possession was taken only on 13.5.1993 and compensation was given to the plaintiffs on 14.5.1993. It was also averred that on the strength of the award passed on 17.11.1992 the appellant collected rent from the tenants. According to the plaintiffs they were entitled to get the rent till the date on which possession of the buildings was taken by the appellant. According to the plaintiffs, first plaintiff was getting a monthly rent of Rs.4,315/- and the second plaintiff was getting a monthly rent of Rs.6,825/-. They claimed an amount of Rs.70,508/-. Appellant alone contested the matter. It was

contended that awards were passed on 27.11.1992 and 30.11.1992 and possession of the land was taken on 10.5.1993 and 13.5.1993 respectively. It was admitted that compensation was paid on 14.5.1993. It was contended that the delay occurred due to the reasons beyond the control of the appellant and also on account of certain subsequent developments. It was contended that the tenants who were in occupation of the buildings resisted eviction contending that they should be rehabilitated. There were various meetings and it was agreed to rehabilitate the tenants. They were provided with alternate accommodation in the new shopping complex and some delay occurred in that ground. According to the appellant, the plaintiffs lost all their rights on the date of award. It was contended that if at all the plaintiffs have got any right they ought to have raised the same by way of asking for a reference and not by way of a civil suit. Court below rejected that contention and found that the appellant got right to claim rent only on the date on which it took possession. It also rejected the contention that the plaintiffs ought to have asked for a reference in the matter and decreed the suit. Challenging that decree and judgment this appeal is filed.

3. Learned counsel appearing for the appellant has argued that the reasonings of the court below are illegal and liable to be interfered with. It is contended that the award was passed on 27.11.1992, actual possession was taken on 10.5.1993 and 13.5.1993 respectively and cheques were issued on 14.5.1993. It is contended that the plaintiffs lost their right to claim rent on the date on which

award was passed and title is vested with the respondents. It is also contended that the tenants who were in occupation of the building ceased to be the tenants of the plaintiffs and they became the tenants of the appellant and it was the appellant who permitted them to continue until an alternate accommodation was provided and as such the appellant alone is entitled to collect the rent. It is further argued that the mere fact that there was some delay in taking possession and disbursing the compensation amount is not at all a ground to hold that the appellant did not get title over the buildings. It is also argued that if at all the plaintiffs have got a grievance they ought to have asked for a reference and they should be agitated the matter before the Land Acquisition Court and not by way of civil suit.

4. There are certain admitted or proved facts. The properties and buildings originally belonged to the plaintiffs. Land was acquired for a public purpose. Award was passed on 27.11.1992. Possession of the landed properties with buildings was taken only on 10.5.1993 and 13.5.1993 respectively. Award amounts were given to the erstwhile owners by way of cheque on 14.5.1993. It was also admitted that from the date of award it was the appellant who collected rent from the tenants. Mere passing of award will not confer title on the State or the appellant. It is only after giving compensation and taking possession the appellant became the owner of the land. So from the date of award till the date of taking possession the plaintiffs alone were entitled to collect rent. Trial court after elaborately considering the pleadings and evidence found that the appellant got

title not from the date of award but from the date of taking possession. That is a finding of fact based on good evidence.

5. There was request to refer the matter for considering the claim for enhancement of compensation. Under Section 18 of the Land Acquisition Act owner of land is entitled to request to refer the matter to the competent court for claiming enhancement of compensation. If there is dispute regarding title that is to be agitated under Section 31(2) of the Land Acquisition Act. There is no provision in the Act to deal with the contingency which had arisen in this case. Land owners will not be in a possession to claim rent in a Section 18 reference or under a reference under Section 31(2) of the Act. So the court below was perfectly correct in holding that this is not a matter covered by the provisions of the Land Acquisition Act. Trial court after detailed discussion found that the first plaintiff was getting a total rent of Rs.4,135/- and second plaintiff was getting a total rent of Rs.3,357/-. Trial court also found that first plaintiff was entitled to get Rs.24,810/- and second plaintiff was entitled to get Rs.20,142/- from the appellant with 12% interest per annum from 1.6.1993 till the date of decree and thereafter 6% interest per annum. Since the State became the owner of the buildings only after taking possession of the buildings after payment of compensation the decree passed by the court below is perfectly correct and does not call for any interference. Decree and judgment passed by the court below are only to be confirmed.

In the result, appeal is dismissed. Parties are directed to suffer their respective costs.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

A.S.No.431 of 2000

JUDGMENT

24th September, 2007.

BEFORE THE REGISTRAR, HIGH COURT OF KERALA, ERNAKULAM

AFFIDAVIT

I, V.P.James, Higher Grade Peon, High Court of Kerala, Ernakulam do hereby solemnly affirm and state as follows:

I am a subscriber to G.P.F. and my Account Number is AJ.15647. Since I have no other source to raise the amount required for my treatment, I am applying for a temporary advance from my G.P.F. Account for Rs.24,840/- (Rupees Twenty four thousand eight hundred and forty only).

Hence, I request to sanction a temporary advance of Rs.24,840/- (Rupees Twenty four thousand eight hundred and forty only) from my G.P.F. Account No.AJ. 15647.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the 8th day of October, 2007.

(Deponent)

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 8th day of October, 2007 at Ernakulam.

High Court of Kerala,
Ernakulam.